

## UNITED STATES INTERNATIONAL TRADE COMMISSION

### **Gray Portland Cement and Cement Clinker from Mexico; Dismissal of Request for Institution of a Section 751(b) Review Investigation**

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) investigation concerning the Commission's affirmative determination in investigation No. 731-TA-451 (Final): Gray Portland Cement and Cement Clinker from Mexico.

SUMMARY: The Commission determines,<sup>1</sup> pursuant to section 751(b) of the Tariff Act of 1930 (the Act)<sup>2</sup> and Commission rule 207.45,<sup>3</sup> that the subject request does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-451 (Final): Gray Portland Cement and Cement Clinker from Mexico. Gray portland cement is classifiable under subheading 2523.29.00 of the *Harmonized Tariff Schedule of the United States (HTS)* and cement clinker is classifiable under *HTS* subheading 2523.10.00.<sup>4</sup> Pursuant to Commission rule 201.4(b), the Commission determined that there was good cause to extend the deadline for this determination as set forth in Commission rule 207.45(c).

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180) or Robert Carpenter (202-205-3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this matter may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

#### BACKGROUND INFORMATION:

On September 19, 2001, the Commission received a request to review its affirmative determination concerning gray portland cement and cement clinker from Mexico (the request), in light of changed circumstances pursuant to section 751(b) of the Act.<sup>5</sup> The request was filed by counsel on behalf of CEMEX, S.A. de C.V. (CEMEX), a manufacturer of cement in Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than that of being ground into finished cement.

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<sup>1</sup> Commissioner Bragg did not participate in the deliberations in this request.

<sup>2</sup> 19 U.S.C. 1675(b).

<sup>3</sup> 19 CFR 207.45.

<sup>4</sup> Gray portland cement has also been entered under *HTS* subheading 2523.90.00 as "other hydraulic cements."

<sup>5</sup> 19 U.S.C. 1675(b).

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure,<sup>6</sup> the Commission published a notice in the *Federal Register* on October 10, 2001,<sup>7</sup> requesting comments as to whether the alleged changed circumstances warranted the institution of a review investigation. The Commission received comments in support of the request from (1) counsel on behalf of Cementos Apasco, S.A. de C.V. and (2) counsel on behalf of GCC Cemento, S.A. de C.V. and its U.S. affiliate, Rio Grande Portland Cement Corp., which both imported cement from Mexico during the original investigation and produce cement in Mexico. Additional comments in support of a changed circumstances review were also received from a number of community officials and cement customers, including: (1) Kenneth A. Mayfield, Dallas County Commissioner, Dallas, TX; (2) Elizabeth G. Flores, Mayor, City of Laredo, TX; (3) Robert J. Schlegel, Pavestone Co.; (4) The Honorable Robert Eckles, County Judge, Harris County, TX; (5) Robert Cutter, CEMEX USA; (6) Richard D. Steinke, Port of Long Beach, CA; (7) Cameron Klein, Oldcastle APG West; (8) David A. Schwab, Schwab Ready Mix, Inc.; and (9) Gerald M. Howard, National Association of Home Builders. In addition, Senator John McCain forwarded a letter to the Commission from Robert Cutter, CEMEX, who supports the initiation of a changed circumstances review. Letters in support of the initiation of a changed circumstances review were also received from a number of members of Congress. Comments received in opposition to the request were filed by counsel on behalf of the Committee for Fairly Traded Mexican Cement (Committee); the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers; the Paper, Allied-Industrial, Chemical & Energy Workers International Union; and the International Union of Operating Engineers (collectively, the domestic industry). The 22 members of the Committee have 28 cement plants located in the Southern Tier region; the 3 labor unions identified above represent workers at 17 plants operated by 13 companies in the Southern Tier.

## ANALYSIS

In considering whether to institute a review investigation under section 751(b), the Commission will not institute such an investigation unless it is persuaded there is sufficient information demonstrating:

- (1) That there have been significant changed circumstances from those in existence at the time of the original investigation;
- (2) That those changed circumstances are not the natural and direct result of the imposition of the antidumping and/or countervailing duty order, and
- (3) That the changed circumstances, allegedly indicating that revocation of the order would not be likely to lead to continuation or recurrence of material injury to the domestic industry, warrant full investigation.<sup>8</sup>

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<sup>6</sup> 19 CFR 207.45(b).

<sup>7</sup> 66 FR 51685.

<sup>8</sup> See *Heavy Forged Handtools from the People's Republic of China*, 62 FR 36305 (July 7, 1997); *Certain Cold-Rolled Carbon Steel Plate Products from Germany and the Netherlands*, 61 FR 17319 (April 19, 1996); see generally, *A. Hirsh, Inc. v. United States*, 737 F. Supp. 1186 (CIT 1990); *Avesta AB v. United States*, 724 F. Supp. 974 (CIT 1989), *aff'd* 914 F.2d 233 (Fed. Cir. 1990); and *Avesta AB v. United States*, 689 F. Supp. 1173 (CIT 1988).

After consideration of the request for review and the response to the notice inviting comments, the Commission has determined, pursuant to section 751(b) of the Act and Commission rule 207.45, that the information available to the Commission does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-451 (Final): Gray Portland Cement and Cement Clinker from Mexico.

The alleged changed circumstance consists of CEMEX's acquisition of U.S. cement producer, Southdown, Inc. CEMEX alleges that the acquisition, which was finalized on November 16, 2000, "eliminates any perceived incentive for CEMEX to import cement from Mexico into the Southern Tier in quantities or at prices that would cause material injury to all or almost all Southern Tier cement producers in the reasonably foreseeable future."

The information available, including the request and the comments received in response to the notice, does not persuade us that an investigation is warranted. In particular:

The decision to undertake a review is "a threshold question, . . . [which] may be made only when it reasonably appears that positive evidence adduced by the petitioner together with other evidence gathered by the Commission leads the ITC to believe that there are changed circumstances sufficient to warrant review."<sup>9</sup> CEMEX's allegation that the acquisition is a sufficient change focuses on the amount invested in the acquisition and the argument that "their economic self-interest precludes them from harming the Southern Tier industry and markets." CEMEX, however, has not provided evidence that the acquisition has changed the effect of the subject imports on the Southern Tier regional industry.<sup>10</sup> The increase in regional market share resulting from CEMEX's acquisition alone does not demonstrate a change without evidence of an actual change in imports or ability to supply imports, prices, or competitive conditions in the industry.<sup>11</sup> CEMEX has not presented adequate and specific facts, such as the volume and value of imports from Mexico since the acquisition, that would provide support for its claims and allegations that the acquisition prevents it from engaging "in import practices that undermine the pricing structure of its Southern Tier (and U.S.) markets."

CEMEX has not met its burden of persuading the Commission that the acquisition has affected the quantity of Mexican imports. Moreover, the information available to the Commission is clearly inconsistent with CEMEX's claims. U.S. imports of cement from Mexico have not fallen or even remained steady, but have instead increased since CEMEX's acquisition of Southdown in November 2000. The volume of imports of Mexican cement was 29.2 percent higher for the January-September 2001 period compared with the same period in 2000. Moreover, the unit values of imports of cement from Mexico have declined since the acquisition. Neither the increases in volume nor declines in value of imports of Mexican cement provide evidence of a change in importing strategy by CEMEX resulting from the acquisition that would warrant a full review to consider the issue of revocation. In not presenting

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<sup>9</sup> *Avesta*, 689 F. Supp. at 1181 (CIT 1988); *A Hirsh, Inc. v. United States*, 729 F. Supp. 1360, 1363 (CIT 1990), *aff'd following remand*, 737 F. Supp. at 1188 (CIT 1990).

<sup>10</sup> CEMEX made similar arguments in the five-year review completed in October 2000 regarding its single domestic operation and the Commission rejected it on the basis that it was not supported by the evidence. USITC Pub. 3361 at 39, n.234, and 41.

<sup>11</sup> See *Avesta*, 689 F. Supp. at 1181-1183; *Avesta*, 724 F. Supp. at 978-980.

adequate facts to demonstrate a sufficient change in circumstances, CEMEX has not met its burden at the initial stage.<sup>12</sup>

Finally, CEMEX raises a number of arguments that address the merits of whether the order should be revoked and are “of little consequence as an isolated fact in terms of whether the review is warranted.”<sup>13</sup>

In order to obtain a review, a requester “must present facts which when weighed against the other facts presented, would convince a reasonable decision-maker that a full investigation is necessary to establish whether or not changed circumstances have obviated the need for the order in its present form.”<sup>14</sup> CEMEX has made various allegations but provided virtually no evidence, and certainly not adequate facts, to support its claim that the acquisition of Southdown is a changed circumstance sufficient to warrant review of the order. Moreover, the available Commerce import data provide clear and convincing contrary evidence that imports of cement from Mexico have increased, and their value has declined, since the acquisition. Finally, CEMEX has not made it clear why the Commission should not find that a shift of production to the U.S. market would be anything other than the natural consequence of the outstanding antidumping duty order.

In light of the above analysis, the Commission determines that institution of a review investigation under section 751(b) of the Act concerning the Commission’s affirmative determination in investigation No. 731-TA-451 (Final): Gray Portland Cement and Cement Clinker from Mexico, is not warranted.

By order of the Commission.

Donna R. Koehnke  
Secretary

Issued: December 17, 2001

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<sup>12</sup> See *Hirsh*, 737 F. Supp. at 1188.

<sup>13</sup> *Hirsh*, 737 F. Supp. at 1188 (“improved health of the domestic industry and avoidance of an injured condition is the hoped-for outcome of an unfair trade order . . . [and] is of little consequence as an isolated fact in terms of whether review is warranted.”).

<sup>14</sup> *Hirsh*, 729 F. Supp. at 1363 (CIT 1990), citing, *Avesta*, 689 F. Supp. at 1181 (CIT 1988).